

Application No. 10/063042
Page 6

Amendment
Attorney Docket No. S63.2B-10057-US01

Remarks

This Amendment is in response to the Office Action dated October 5, 2005. Claims 1-29 are pending in this application. The Office Action rejected claims 1-6, 24, 25, 28 and 29 under 35 USC § 102(b) over Smith et al. (WO 01/01889; hereinafter "Smith"); rejected claims 1-6, 11-17, 22 and 24-29 under 35 USC § 102(e) over Kim (US 6270524); and rejected claims 7-10, 18-21 and 23 over Kim in view of Brown (WO 00/30563).

By this Amendment, claims 1, 2, 8, 13 and 24 are amended. Support for the amendments may be found at least in the Figures. Claims 8 and 13 are amended to correct typographical errors. Applicant reserves the right to prosecute all cancelled subject matter in a subsequent patent application claiming priority to the immediate application. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Claim Rejections - Smith

The Office Action rejects, under 35 USC § 102(b), claims 1-6, 24, 25, 28 and 29 over Smith (WO 01/01889). These rejections are traversed.

Independent claim 1 requires a spline extending "toward a serpentine band adjacent thereto...the spline and adjacent band separated by a gap." Similarly, independent claim 24 requires "each spline terminating short of the trough toward which it extends to form a gap between the spline and the trough."

The Office Action asserts that Figure 7 shows the claimed gap. See Office Action page 2, numbered paragraph 1. This assertion is traversed.

Smith shows an embodiment of a stent at Figure 2A having connectors 114. A person of ordinary skill in the art would recognize that a connector 114 is connected at both ends, and thus, the stent of Figure 2A does not show the claimed "gaps."

Smith shows another embodiment of a stent in Figures 6 and 7 having multiple connecting regions 214. Each connecting region 214 comprises a pair of interconnecting elements 212a and 212b, wherein each of interconnecting elements 212a and 212b is one-half the width of a connector 114 as shown in Figure 2A. The connectors 212a and 212b are attached to one another by welding or other appropriate means. See page 9, lines 18-30.

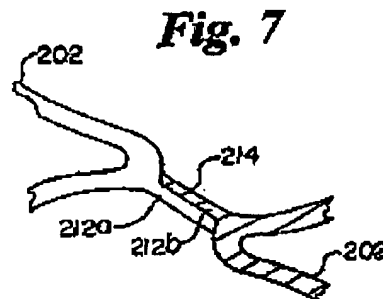
A person of ordinary skill in the art would recognize that, like the embodiment of

Application No. 10/063042
Page 7

Amendment
Attorney Docket No. S63.2B-10057-US01

Figure 2A, the embodiment of Figure 7 does not include the claimed "gaps."

As to the assertion that Figure 7 shows a gap, Applicant asserts that the drawings of Smith are informal, and that a gap is not actually shown. US 6551351 is a US equivalent to Smith, and includes formal versions of the drawings included in Smith. Figure 7 of US 6551351 does not show a gap. A copy of the formal version of Figure 7 is provided below for convenience.



Therefore, Applicant asserts that Smith does not disclose a gap as required by independent claims 1 and 24, and claims 1 and 24 are patentable over Smith. Claims 2-6, 25, 28 and 29 depend from either claim 1 or claim 24, and are patentable for at least the reasons discussed with respect to claims 1 and 24. Accordingly, Applicant requests the withdrawal of the rejections under 35 USC § 102 applying Smith.

Claim Rejections - Kim

The Office Action rejects, under 35 USC § 102(e), claims 1-6, 11-17, 22 and 24-29 over Kim (US 6270524). The Office Action also rejects, under 35 USC § 103, claims 7-10, 18-21 and 23 over Kim in view of Brown (WO 00/30563). The rejection of claims 11 and 22 are traversed.

Independent claim 11 requires a spline to contact a trough region of an adjacent serpentine band when the stent is expanded.

The Office Action asserts, "Although not illustrated, the stent is capable of being expanded to a point in which splines contact adjacent bands." See Office Action page 3, first paragraph. Thus, the Office Action relies on inherency in making the rejection under 35 USC §

Application No. 10/063042
Page 8

Amendment
Attorney Docket No. S63.2B-10057-US01

102.

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51.

Referring to Figure 6, for example, Kim shows a stent-graft structure 10' having a plurality of flexible ring frames 14. Adjacent ring frames 14 are coupled together with rigid connectors 34. See column 12, lines 44-65.

While it is possible that the structure 10' could be expanded to the point that the rigid connectors 34 are practically oriented in a stent circumferential direction and an anchor member 38 contacts an adjacent ring frame 14, Applicant asserts that such behavior is not necessarily present in the device. Applicant further asserts that a person of ordinary skill in the art would recognize that the device is not intended to be expanded to the magnitude proposed in the Office Action.

Kim does not discuss expansion of the structure at levels beyond those depicted in the drawings. It is entirely possible that, upon expansion beyond the level shown in Figure 6, the rigid connectors 34 may deform, or the point of connection between the rigid connectors 34 and the ring frames 14 may deform, and thus the anchor member 38 would not contact an adjacent ring frame 14. Therefore, the inherency asserted in the Office Action is not necessarily present in the Kim device, and independent claim 11 is patentable over Kim. Claim 22 depends from claim 11 and is patentable over Kim for at least the reasons discussed with respect to claim 11. Accordingly, Applicant requests the withdrawal of the rejections with respect to claims 11 and 22.

Independent claims 1 and 24 have been amended and recite a reciprocating spline, wherein the spline and the reciprocating spline both cross a common stent circumference. The amendments are believed to render the rejections moot. Claims 2-10, 12-23 and 25-29 depend,

Application No. 10/063042
Page 9

Amendment
Attorney Docket No. S63.2B-10057-US01

directly or indirectly, from either independent claim 1 or independent claim 24. Accordingly, Applicant requests withdrawal of the rejections under 35 USC § 102 and 35 USC § 103.

Conclusion

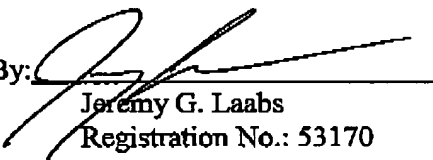
Based on at least the foregoing amendments and remarks, Applicant respectfully submits this application is in condition for allowance. Favorable consideration and prompt allowance of claims 1-29 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: 1/17/06

By: 
Jeremy G. Laabs
Registration No.: 53170

6109 Blue Circle Drive, Suite 2000
Minnetonka, MN 55343-9185
Telephone: (952) 563-3000
Facsimile: (952) 563-3001

f:\wpwork\jgl\10057us01_amd_20051227.doc